

Miller
143709



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Alpha Q, Inc.
File: B-243488
Date: April 19, 1991

Richard A. Degen, Esq., for the protester.
Craig E. Hodge, Esq., and Thomas W. Rau, Esq., Department of the Army, for the agency.
Behn Miller, Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester does not have the direct economic interest necessary to protest that contracting agency improperly issued a amendment extending solicitation's closing date in order to permit a newly qualified source to compete where relief requested is exclusion of new source's proposal and record shows that protester was not the low offeror even among those offers submitted by the original closing date and thus, even if protest were sustained, protester would not be in line for award.

DECISION

Alpha Q, Inc. protests the issuance of amendment No. 0001-- extending the original March 13, 1991, closing date to March 28--under request for proposals (RFP) No. DAAJ09-91-R-0245, issued by the Army Aviation Systems Command (AVSCOM) for 1,873 spacer-turbine rotors.^{1/} Specifically, Alpha Q protests that the Army improperly extended the RFP's closing date to favor another offeror who was unable to comply with the original March 13 closing deadline.

We dismiss the protest.

On February 21, the Army issued the RFP to six approved sources for the spacer-turbine rotor; because the part was urgently needed to support Operation Desert Storm, synopsis of

^{1/} The spacer-turbine rotor is a flight safety part for the T-53 aircraft engine.

the requirement in the Commerce Business Daily (CBD) was waived pursuant to Federal Acquisition Regulation (FAR) § 5.202(a).2/ The RFP provided that award would be made to the low-priced, technically acceptable offeror, and included FAR § 52.215-16, which advises offerors that award may be made on the basis of initial proposals.

When the solicitation was issued, a source approval request was pending from CMP Manufacturing; prior to the March 13 closing date, this firm was approved as a source for the spacer-turbine rotor. To enhance competition, AVSCOM decided to extend the closing date to March 28 so that CMP could prepare an offer; on March 12, by facsimile, AVSCOM notified CMP of the closing date extension and provided CMP with a copy of the solicitation. AVSCOM also mailed a copy of the closing date extension to the six other approved sources; Alpha Q received this notification on March 14. Alpha Q contends that issuance of the amendment extending the closing date in order to permit CMP to compete was improper, and, as relief, requests that AVSCOM disregard any offer received after the original March 13 closing date.

Under the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551, 3553(a) (1988), and our Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.0(a)), a protester must be an "interested party" before we will consider its protest. To qualify as an interested party, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by the failure to award the contract; accordingly, where a protester would not be in line for award if its protest were sustained, it is not an interested party. Eng'g Resources, Inc., B-241448.2, Feb. 25, 1991, 91-1 CPD ¶ 205.

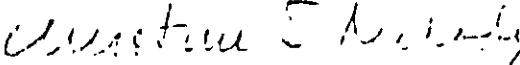
In this case, AVSCOM states that award will be made to the low-priced, technically acceptable offeror without conducting

2/ FAR § 5.202(a)(2) provides that the contracting officer need not synopsise a procurement in the CBD where the procurement is conducted pursuant to 10 U.S.C. § 2304(c)(2) (1988)--waiving the requirement for full and open competition where the agency's need is of such unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources solicited--and the agency cannot comply with the time periods specified in FAR § 5.203 for publication in the CBD without serious injury to the government.

discussions or requesting best and final offers (BAFO).^{3/} The record shows that the low offeror--Pye & Hogan Machine Company--submitted its offer by the original March 13 closing date; of the four offerors, only the newly approved source, CMP, submitted its offer after the original March 13 closing date. Thus, even if Alpha Q's protest were sustained and the relief it requests were granted--i.e., that any offer received after the March 13 closing date be eliminated from the competition--Pye & Hogan, not Alpha Q, would still be in line for award. Accordingly, since the exclusion of CMP's offer would not change Pye & Hogan's status as low bidder, Alpha Q does not have the interest necessary to maintain a protest.

In its response to the Army's request for dismissal of the protest, Alpha Q for the first time suggests that if its protest were sustained, the Army should issue a request for BAFOs. By referring to a request for BAFOs, Alpha Q apparently is contending--although it does not explicitly make this argument in its submission--that it is an interested party, despite the fact that it is not the low-priced, technically acceptable offeror, because it would have an opportunity to lower its price if the protest were sustained and BAFOs requested as a result. As noted above, Alpha Q's protest requests only that any offer received after the original March 13 closing date be excluded from consideration; this request for relief is consistent with the protester's position, which is that CMP, the newly approved source, should not be allowed to compete. Contrary to Alpha Q's current suggestion, we fail to see why issuing a request for BAFOs would be the appropriate relief if we were to sustain the protest. A decision sustaining the protest in effect would hold that it was improper for the Army to have delayed the original closing date in order to allow a newly approved source to compete. The appropriate remedy in this circumstance would be to exclude the new source, as Alpha Q's protest requests, not to issue a request for BAFOs.

The protest is dismissed.


Christine S. Melody
Assistant General Counsel

^{3/} As noted above, the RFP incorporated FAR § 52.215-16, which advised offerors that award may be based on initial proposals.